

## **Children Not Safe From Sexual Predators: General Assembly Failed to Take Appropriate Action in 2006 Session**

By Jameson Taylor

On August 22, 2006, Cynthia Moreland of Wendell, North Carolina, was kidnapped from a Raleigh parking garage and murdered. Antonio Chance, a convicted sex offender, has been charged with the murder. On August 31, a 13-year-old girl from Cumberland County, New Jersey, was kidnapped and repeatedly raped by five men. Vicente Rodriguez, 25; Raul Chasares, 24; Oscar Estrada-Lopez, 23; Alfonso Ponce, 20; and Edson Leonte, 19, have reportedly confessed to the crime. At least one of the men is an illegal alien, and the legal status of the other four is currently under investigation. On September 7, as many as 20 men and boys gang-raped an 11-year-old in a Milwaukee home. The rapes were allegedly instigated and directed by a 16-year-old *girl*, who was reportedly a “romantic interest” of the 11-year-old. The 11-year-old has HIV. On September 12, Kimberly Watkins of Fayetteville, North Carolina, was charged with 53 counts of aiding and abetting sexual offenses committed against her own daughter. Watkins’ live-in boyfriend (age 41) was arrested in August for repeatedly raping the girl over a 10-year period. Currently, police in Spring Lake are searching for an 81-year-old man, Richard Gallagher, accused of molesting a four-year-old boy. Gallagher was convicted in Georgia for molesting another child and currently wanted there for failing to report his address to the state’s sex offender registry. Similarly, police are still looking for former professor Richard Gibbs, 65. In spite of being a convicted sex offender—and being wanted in California and Ohio for child molestation—Gibbs was set free on a \$25,000 bond after being charged with 14 counts of sexual abuse at his home on Harkers Island.

As reports of such crimes have become commonplace, lawmakers have generally sought to apply simplistic answers to what is a complex problem. In some places, such as Spain, where the age of consent for both heterosexual and homosexual activities is only 13, legislators have virtually given up. In the Netherlands, pedophiles even have their own officially recognized political party—the PNVD or Brotherly Love, Freedom and Diversity party. Here in the United States, we tend to take a less permissive view of child molesters. In Louisiana, Florida, Montana, Oklahoma and South Carolina, certain repeat offenders are sentenced to death. Eight states, including Texas, California and Wisconsin, allow castration—a solution Thomas Jefferson recommended for all rapists and sodomites.

By contrast, North Carolina gives first-time convicted child molesters a minimum sentence of anywhere from no prison time to 13 months for “taking indecent liberties with children” — a class F felony. The following crimes, however, are class B1 felonies and thus carry a mandatory minimum sentence of 16 years: 1) any sexual contact with a child less than age 13 by an adult or youth six years older than the victim; and 2) “consensual” intercourse or sexual activity with a child 13, 14, or 15 years old, where the perpetrator is at least six years older. A repeat B1 felony against a victim 13 or younger is automatically punished with life in prison without parole.

Another option adopted by at least 19 states so far, including neighboring Virginia, South Carolina and Georgia, is Jessica's Law. Named for Jessica Marie Lunsford, Jessica's Law imposes a mandatory 25-year minimum sentence for sex crimes against children less than 12 and lifetime GPS tracking for many offenders. The law was first passed in 2005 by the Florida legislature after nine-year-old Jessie was kidnapped from her home, repeatedly raped and sexually assaulted, and then buried alive in garbage bags in her neighbor's backyard. John E. Couey (age 47), who has previous convictions for indecent exposure, committing a lewd act upon a child and numerous other crimes, has been charged with the sexual battery and murder. At the time, Couey was living at his stepsister's house, 150 yards from Jessie's home, instead of at the address Couey had reported to Florida's sexual offender registry.

### **North Carolina: No to Jessica's Law**

Although Jessica's Law was first passed in Florida, little Jessie was actually a native of Gastonia, North Carolina. The third-grader lived and went to school in North Carolina most of her life, only moving to Florida in March 2004. In Jessica's memory, concerned mothers, such as Martha Jenkins, president of the North Carolina Federation of Republican Women, have been pressing North Carolina legislators to act. According to Jenkins, "The North Carolina Federation of Republican Women lobbied hard for Jessica's Law." In response, Reps. Tim Moore (R-Cleveland) and Julia Howard (R-Davie/Iredell) introduced "The Jessica Lunsford Act for NC" in May 2006. If passed, House Bill 1921 would have instituted either life imprisonment without parole or a minimum sentence of 25 years, followed by lifetime electronic monitoring, for adults (18 years and older) convicted of the lewd or lascivious molestation of a child under age 12. The bill also would have: 1) lengthened North Carolina's sexual offender registration period from 10 years to a minimum of 30 years; 2) required sex offenders to appear in person on a semiannual basis to verify their status and address and to report such changes within 48 hours; 3) created new penalties for those persons (such as Couey's stepsister) who withhold information about or harbor a registered sexual offender; and 4) prohibited sexually violent predators and other offenders from working or volunteering for businesses, schools and other entities "where children regularly congregate." Yet, says Jenkins, "That bill was never even heard in committee."

Instead, the Democrat leadership pushed through a compromise measure, House Bill 1896 (Session Law 2006-247). This legislation rejects the policy crystallized in Jessica's Law that lengthy prison sentences are the best deterrent for repeat sex offenders. Rather than mandating additional jail time for child molesters, much less 25 years, the new law requires lifetime [GPS monitoring](#) for sexually violent predators, recidivists and those convicted of an aggravated offense. Other offenders, especially those convicted of abusing a minor and those thought to require "the highest possible level of supervision and monitoring" are subject to shorter terms of active monitoring. Any offender subject to lifetime monitoring, however, may also be released, upon approval by the Post-Release Supervision and Parole Commission, after only one year following the end of the offender's sentence or probation. Each individual subject to satellite-based monitoring

must also pay a one-time fee of \$90 to offset the costs of calibrating the monitoring system.

In passing House Bill 1896, legislators are gambling that GPS tracking is a more effective and more just way of keeping child molesters at bay. Is this a safe bet?

Before we answer this question, pause to consider that the American Civil Liberties Union (ACLU) favors GPS tracking over what they consider the “needless incarceration” of many sex offenders. These are the same people who oppose sex offender registries and restricted residential zones, who believe child pornography is a First Amendment right, and who gave free legal representation (*Curley v. NAMBLA*) to the North American Man/Boy Love Association after the organization was sued for publishing a “rape and escape” manual used by one of its members to murder and (then) rape a 10-year-old boy.

Might there be a problem here?

The ACLU aside, many voters don’t seem to understand that the primary reason legislatures across the country are adopting GPS monitoring is because it’s cheaper than taking sex offenders off the street. As [William Saletan](#) points out, “Politicians make a big show of imposing GPS on predators after a child has been killed and the community is up in arms. ... But GPS tracking [is] ... many times less than the cost of incarceration. So, while there may be an occasional public-outrage incentive to impose GPS on offenders who will be out of jail anyway, there’s a constant financial incentive to impose it on those who are in jail—and let them out.”

While the cost-effectiveness of GPS tracking is not yet known, Florida’s experience indicates that active monitoring runs about \$20 a day per offender, a figure that includes both the cost of technology (\$8.98) and personnel (\$11.13).<sup>1</sup> By comparison, the North Carolina Department of Correction estimates that the average incarceration cost per inmate is \$63.56 per day, or \$23,199 a year.

With an overcrowded prison system and a serious backlog of cases, GPS tracking might seem like a reasonable alternative for North Carolina. But given the irreparable harm caused by sexual abuse, funding could be found to increase prison capacity and augment the court system. The real question, though, is whether GPS tracking actually works. According to a [July 2005](#) study in the *Journal of Experimental Criminology*, existing data does not indicate that electronic monitoring has been effective in reducing recidivism rates. Conclude researchers Marc Renzema and Evan Mayo-Wilson, “After 20 years, it is clear that [electronic monitoring] has been almost desperately applied without adequate vision, planning, program integration, staff training, and concurrent research.”<sup>2</sup> Even studies that support the effectiveness of GPS monitoring have found that the technology

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<sup>1</sup>J. Peckenpugh, “Controlling Sex Offender Reentry: Jessica’s Law Measures in California,” Working Paper for Criminal Sentencing and Corrections Policy Series, Stanford Criminal Justice Center (Stanford: Stanford Law School, 2006), 26.

<sup>2</sup>M. Renzema and E. Mayo-Wilson, “Can electronic monitoring reduce crime for moderate to high-risk offenders?” *Journal of Experimental Criminology* 1, no. 2 (2005): 230; as quoted in Peckenpugh, 22.

is not nearly as effective with sex offenders as with other types of criminals.<sup>3</sup> One reason for this is because the vast majority of sex crimes occur within or near the home and are perpetrated not by strangers, but by boyfriends, stepparents, and others known to the victim.

The younger the child, the more likely the assailant will be a close relative or family friend. Observes a 1994 report by the U.S. Bureau of Justice Statistics, “The biggest difference between child victims and adult victims was their relationship to the man who committed the sex crime.” In 46 percent of cases, child victims were assaulted by a relative, often a stepfather or biological father.<sup>4</sup> In fact, strangers accounted for only 7 percent of sex crimes against children.

In Jessica Lunsford’s case, it is true that active GPS tracking would have alerted police to the fact that John Couey had entered her bedroom. For the daughter of Kimberly Watkins, no such luck. Likewise, GPS would not have helped the victims of Richard Gibbs, at least one of whom was habitually raped in a bathroom next to Gibbs’ office at Shippensburg University.

At the heart of the debate over Jessica’s Law is the question of whether technological innovations, like GPS tracking, are a sufficient substitute for the moral formation of America’s citizenry. Clearly, technology alone is not enough. Similarly, structural solutions, like sex offender registries, can only go so far. As for residential bans, Session Law 2006-247 prohibits registered sex offenders from residing within 1,000 feet of a school or child care center. Sexual predators are likewise prohibited from working or volunteering at any place that entails the instruction, supervision or care of minors.

Yet several studies suggest residency bans don’t work.<sup>5</sup> And while none of these studies have examined whether such bans might work better in conjunction with GPS monitoring, the reality is that children don’t just congregate at schools and parks, but at beaches, malls and, once they get a little older, any place their parents are *not*. In an attempt to address this curious ubiquity of children, Georgia’s recently passed Jessica’s Law includes a provision that prohibits registered sex offenders from living, working or loitering within 1,000 feet of a school bus stop. The provision has been challenged in court (*Whitaker v. Perdue*) and is not likely to withstand judicial scrutiny. Given that active GPS monitoring does not work in certain rural and mountainous areas, overly burdensome residential restrictions will encourage some offenders to move out of locales where they can be easily tracked, if not cause molesters to drop off the grid altogether.

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<sup>3</sup>Cf. Padgett, K.G., W.D. Bales and T.G. Blomberg, “Under Surveillance: An Empirical Test of the Effectiveness and Consequences of Electronic Monitoring,” *Criminology & Public Policy* 5, no.1 (2006): 61-91.

<sup>4</sup>But several studies, including a [2001 analysis](#) of North Carolina’s Central Registry for Child Abuse and Neglect, have concluded that biological fathers are far less likely to abuse their own children than are surrogate fathers. Researchers also observe that abuse is much more closely linked to [family structure](#) than to socioeconomic or health care factors.

<sup>5</sup>See Peckenpaugh for a review of the recent literature.

Similarly, a report by the [Arkansas Crime Information Center](#) indicates that sex offender registries are not as effective as the public seems to believe. This is not to say that the new law is not to be commended for strengthening North Carolina’s registration requirements. Like House Bill 1921, Session Law 2006-247 requires sex offenders to register in person and verify in person on a semiannual basis their status and address. Also like House Bill 1921, the law no longer permits offenders to be automatically dropped from the registry list. Instead, each offender must petition their district superior court for removal. The law that passed, however, does not include a 30-year registration period for sex offenders, but rather extends the registration period from 10 years to a period no less than 10 years—a change, prompted, in part, by enactment of the federal Jacob Wetterling Act.

Yet an estimated 20 percent of sex offenders do not register. And why should they, given that the verification process in many states—including North Carolina, until the passage of House Bill 1896—is so lax? Moreover, because so few sex crimes against children are committed by strangers, sex offender registries can only be one part of an overall strategy to protect kids. As for rehabilitation, experts agree that, at best, sex offender treatments are only “marginally effective”; at worst, they are an incredible waste of taxpayer dollars, with [inpatient costs](#) ranging between \$70,000 to \$125,000 annually per offender.<sup>6</sup>

Finally, while it is true that numerous studies have found that recidivism rates among sex offenders are *lower* than among the general criminal populace, the value of such studies is highly questionable because so few sex crimes are reported.<sup>7</sup> Cautions the Center for Sex Offender Management with the U.S. Department of Justice, “Only a fraction of those who commit sexual assault are apprehended and convicted for their crimes.” Indeed, a 1997 study by the Bureau of Justice Statistics found that convicted sex offenders “represent less than 10% of all sex offenders living in communities nationwide.” Another national study by [Kilpatrick, Edmunds and Seymour](#) found that a mere 16 percent of sex crimes are ever reported.

## **New Sentencing Guidelines Needed**

The “official” explanation as to why the Democrat leadership didn’t even consider passing Jessica’s Law is because a 25-year minimum mandatory sentence for child molestation is inconsistent with [North Carolina’s structured sentencing laws](#). These guidelines are based upon a sentencing philosophy that judges the severity of a crime according to the degree of harm the offense causes to persons, property and society. In

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<sup>6</sup>For a review of recent literature, see B. Trowbridge, “[Does Sex Offender Treatment Work?](#)” The Trowbridge Foundation. In particular, see [G.C.N. Hall](#) (1995) and “[Recidivism of Sex Offenders](#),” by The Center for Sex Offender Management.

<sup>7</sup>Also, recidivism rates for child molesters increase over time—for instance, as compared to rapists (cf. R. Prentky et al. (1997)). Thus, longer registry periods, such as the 30 years proposed by House Bill 1921, will prove more effective than shorter periods. Moreover, the fact that recidivism rates differ for child molesters than for other criminals suggests that sexual abuse constitutes an essentially different act—one beyond the pale of ordinary vice—than does armed robbery or, even, rape. Only murderers have a lower recidivism rate than sex offenders.

categorizing child molestation (i.e., taking indecent liberties with a child) as a class F felony, the North Carolina Sentencing and Policy Advisory Commission decided that molesting a child causes “significant,” but not “serious” personal injury. Hence, first-time molesters may receive a minimum sentence of only 13 months, or they may simply be put on probation.

On the surface, Jessica’s Law *is* inconsistent with North Carolina’s structured sentencing guidelines. This fact alone, however, does not mean that legislators cannot impose a longer sentence for taking indecent liberties with a child, or, as House Bill 1921 sought to do, create a new offense (lewd or lascivious molestation) that would be punished with a longer sentence. According to N.C. Appeals Court Judge Eric Levinson, “It is not uncommon for the Legislature to make amendments to the criminal code, and it is not unusual or extraordinary for the Legislature to create new categories of crimes.” Indeed, adds Levinson, “There is at least one other criminal offense that falls outside the Structured Sentencing Act (SSA), Driving While Impaired (DWI). Judges are required to sentence DWI offenders based not upon the SSA, but on more specific sentencing guidelines.” Under these guidelines, a first-time Level 1 DWI offense, which is a misdemeanor, can be punished with a prison term up to 24 months—almost twice the minimum prison time for taking indecent liberties with children.

Drunk driving is a serious crime. Molesting a child is worse. As was done for drunk drivers, North Carolina should create separate sentencing guidelines for child molesters. Under these guidelines, the sexual penetration or sodomy of a child less than age 13, where the perpetrator is at least three years older, should be punished with a mandatory, minimum sentence of 25 years (cf. Virginia’s recently passed Jessica’s Law). Similarly, penalties for other forms of child molestation, such as groping, should be increased. Short of drafting separate sentencing guidelines, the Legislature should, at the very least, recognize that sexual abuse causes “serious long-term personal injury” and so punish first-time offenders as class C felons.

Critics say increasing mandatory jail time for sex offenders could discourage victims from turning in family members who are molesters. On the flipside, longer sentences could encourage some victims to come forward, precisely because they know that the person who abused them won’t be coming back anytime soon. More to the point, any parent who permits his or her child, not to mention the children of others, to be molested is either in denial or is complicit in what is going on. Sentencing considerations are not going to be decisive in such cases.

Others contend that longer prison terms might lead to fewer convictions by taking up court resources or by limiting the ability of prosecutors to persuade offenders to plea down. Drawing upon his former experience as a sexual assault prosecutor, Judge Levinson disagrees. “Presumably, the district attorneys would still have plea bargaining authority.” As for court resources, Levinson thinks that “for many prosecutors—particularly those specially trained in prosecuting assaults on children—taking the additional trial time that may be necessary to prosecute these cases will not be worrisome. It’s really a matter of priorities.”

**For more information,** please click [here](#).